

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

June 26, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

REQUEST FOR APPROVAL TO ADOPT A NEW CHAPTER UNDER HAWAII
ADMINISTRATIVE RULES AS TITLE 13 CHAPTER 86, "SEA CUCUMBER", THROUGH
EMERGENCY RULEMAKING PROCEDURES TO PROTECT AGAINST THE
OVERHARVEST OF SEA CUCUMBERS FROM STATE WATERS

Submitted for your consideration and approval is a request to adopt Hawaii Administrative Rules ("HAR") chapter 13-86 via emergency rulemaking provided for under Section 91-3, Hawaii Revised Statutes (HRS), to address the recent spike in the commercial harvest of sea cucumbers that poses an imminent threat to Hawaii's marine ecosystems.

HISTORY

Sea cucumbers are slow moving and virtually defenseless marine invertebrates that are found throughout the world. In Hawaii, there are over fourteen shallow water species that live in various marine habitats. Sea cucumbers play an important role in nutrient recycling in marine ecosystems. They feed on organic matter on the sea floor, speeding the breakdown of plant and animal debris.

The harvesting of sea cucumbers has been a highly lucrative international business trade for decades, with most sea cucumber products being exported to China for food or medicine. This in turn has created a boom-bust economy in many countries and has nearly collapsed sea cucumber populations in those areas. Many affected countries have either enacted laws to ban the outright harvesting of sea cucumbers or established management programs to ensure responsible harvesting. Until recently, sea cucumbers have not been commercially harvested on a large scale in Hawaii, and currently there is no rule regulating the take of sea cucumbers from State waters.

Within the past few weeks, the Department of Land & Natural Resources ("Department") has been made aware of large amounts of sea cucumbers being harvested around the islands of Maui and Oahu. Upon further investigation, the Department has learned that these sea cucumbers may be sold for \$5 each to a newly established company that processes them and exports them to China. Based on reports, observations, and interviews, the Department estimates that well over a thousand sea cucumbers are being harvested each day. Photos of recent sea cucumber harvests on Maui and Oahu are attached as **Exhibit 1**. Additional harvesters are reportedly being recruited to help take as many sea cucumbers as possible before any regulations are established.

According to anonymous sources, the business intends to ship 1-3 tons of dried sea cucumber from each island to China.

AUTHORITY

The Department of Land & Natural Resources has been delegated the power and duty to “manage and administer the aquatic life and aquatic resources of the State.”¹ To carry out these duties, the Department is authorized to promulgate rules “for and concerning... the conservation and allocation of the natural supply of aquatic life in any area.”² The rules may include open and closed fishing seasons, and they must be adopted in accordance with the procedural requirements of Chapter 91, HRS.

Chapter 91, HRS, provides the general procedures for administrative agencies to adopt rules within their statutory authority. In most situations, “prior to the adoption of any rule authorized by law,” an agency must “give at least thirty days’ notice for a public hearing,” and “afford all interested persons opportunity to submit data, views, or arguments,” all of which must be “fully considered” prior to the agency’s decision on adopting the rule.³ However, if “an agency finds an imminent peril... to natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days’ notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting of the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable⁴ to adopt an emergency rule to be effective for a period no longer than one hundred twenty days without renewal.”⁵

PURPOSE

The Division of Aquatic Resources (“DAR”) proposes to adopt emergency rules prohibiting the take, possession, and sale of sea cucumbers from State waters. Based on the recent emergence of a large-scale commercial fishery for sea cucumbers in Hawaii and the impacts that similar fisheries have had on sea cucumber populations in other parts of the world, DAR believes an immediate ban on all harvest is necessary to prevent an imminent peril to the State’s nearshore marine ecosystems.

DAR recognizes that the rule may impact individuals who harvest certain species of sea cucumber for personal consumption. Given the temporary nature of these emergency rules,⁶ DAR believes that a total ban is reasonable and necessary to allow the Department to assess the impacts of sea cucumber harvest. While the temporary ban is in place, DAR will explore more permanent rules that may allow for sustainable harvest of certain species.

The proposed rules are attached as **Exhibit 2**.

¹ HRS §187A-2

² HRS §187A-5

³ HRS §91-3(a).

⁴ The Department has found it practicable to post abbreviated notice of the proposed emergency adoption of HAR chapter 13-86 on the Internet pursuant to HRS §91-2.6.

⁵ HRS §91-3(b) (emphases added).

⁶ Pursuant to HRS §91-3(b), emergency rules are effective for a period of not longer than 120 days.

RECOMMENDATIONS:

“That the Board find that there is an imminent peril to the State’s natural resources related to the commercial harvest of sea cucumbers from state waters.”

“That the Board approve the adoption of Hawaii Administrative Rules chapter 13-86, Sea Cucumber.”

Respectfully submitted,



ALTON MIYASAKA, Acting Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachments:

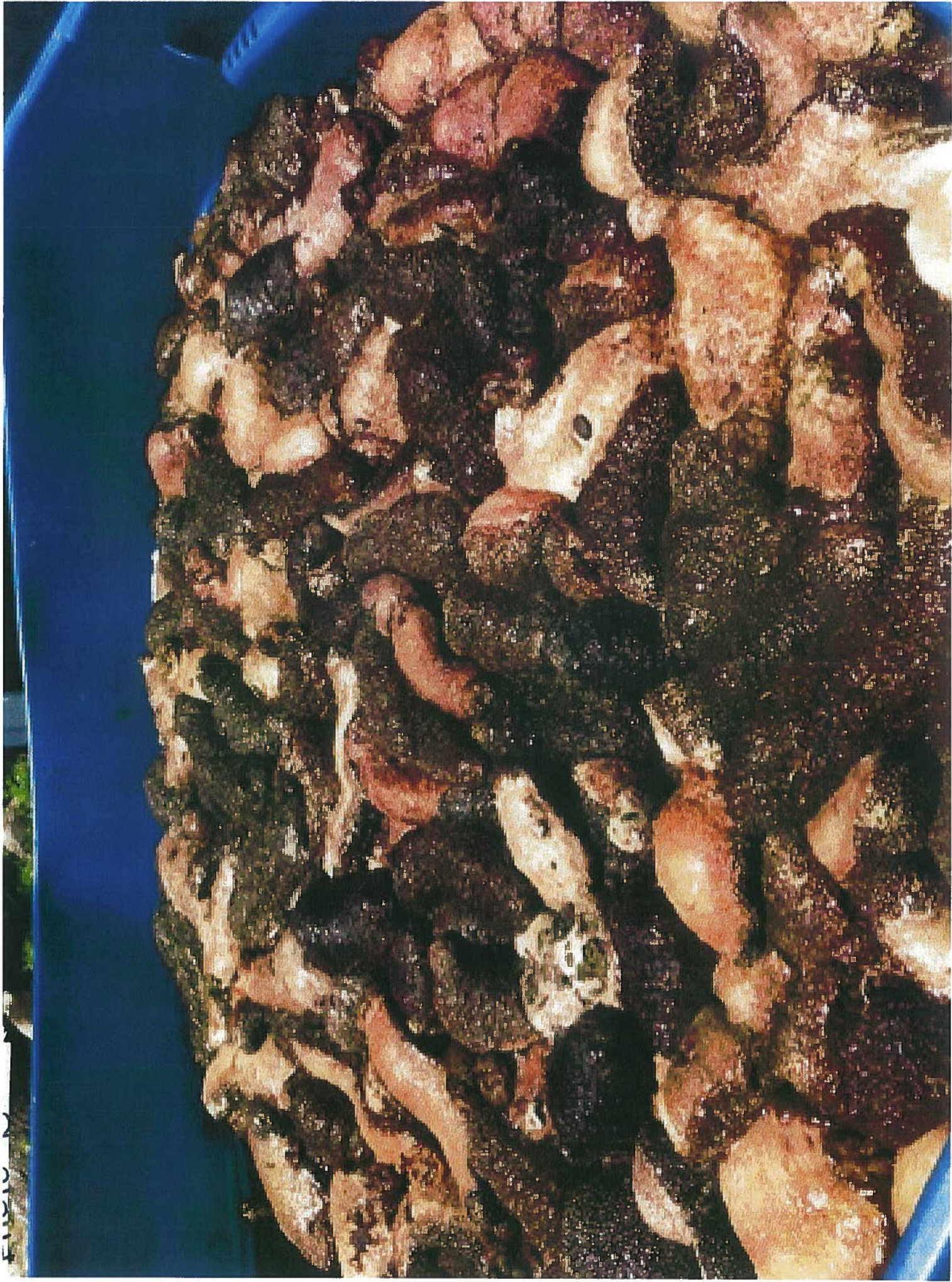
- Exhibit 1 – Photos of recent sea cucumber harvest on Maui and Oahu
- Exhibit 2 – Ramseyer Draft

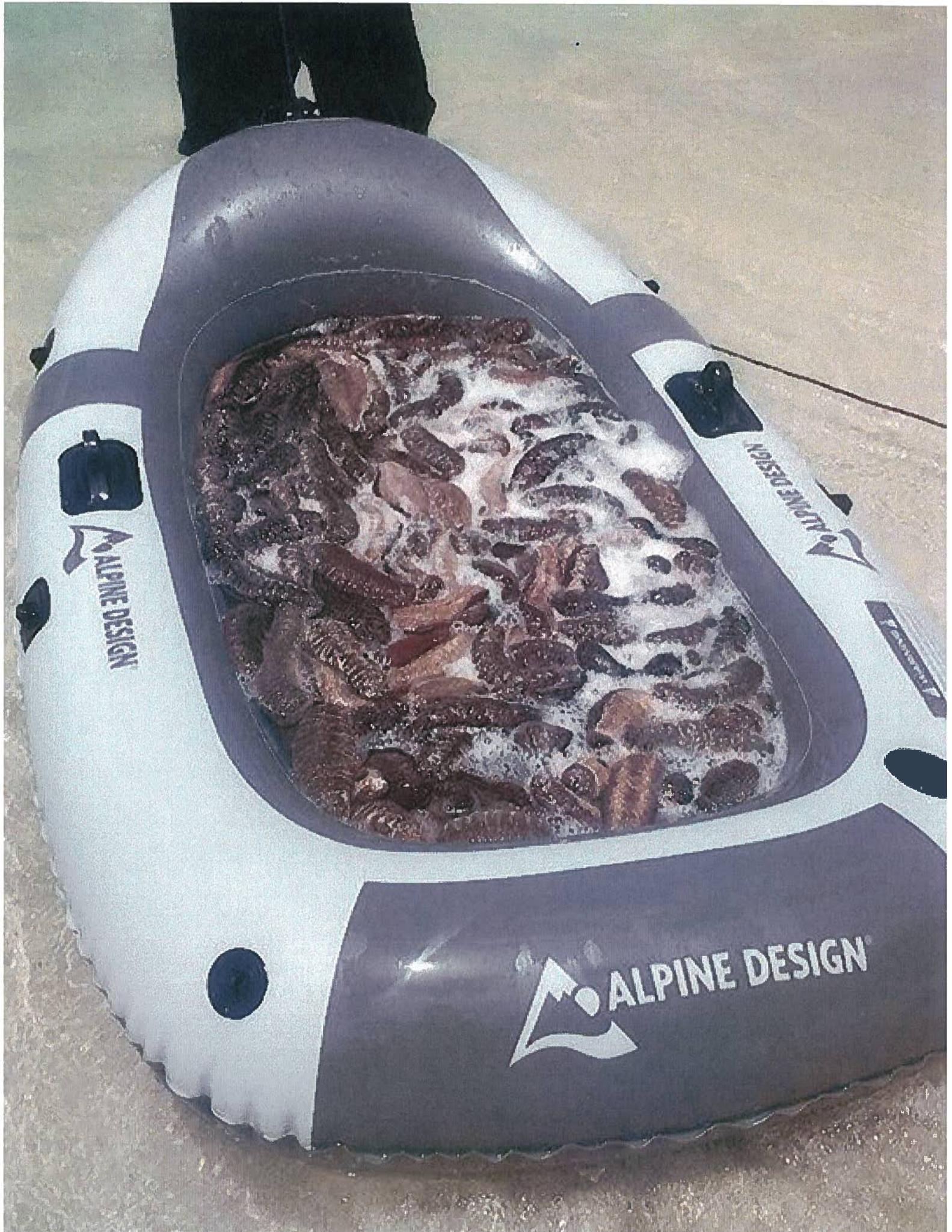
PHOTO. 9



PHOTO 12



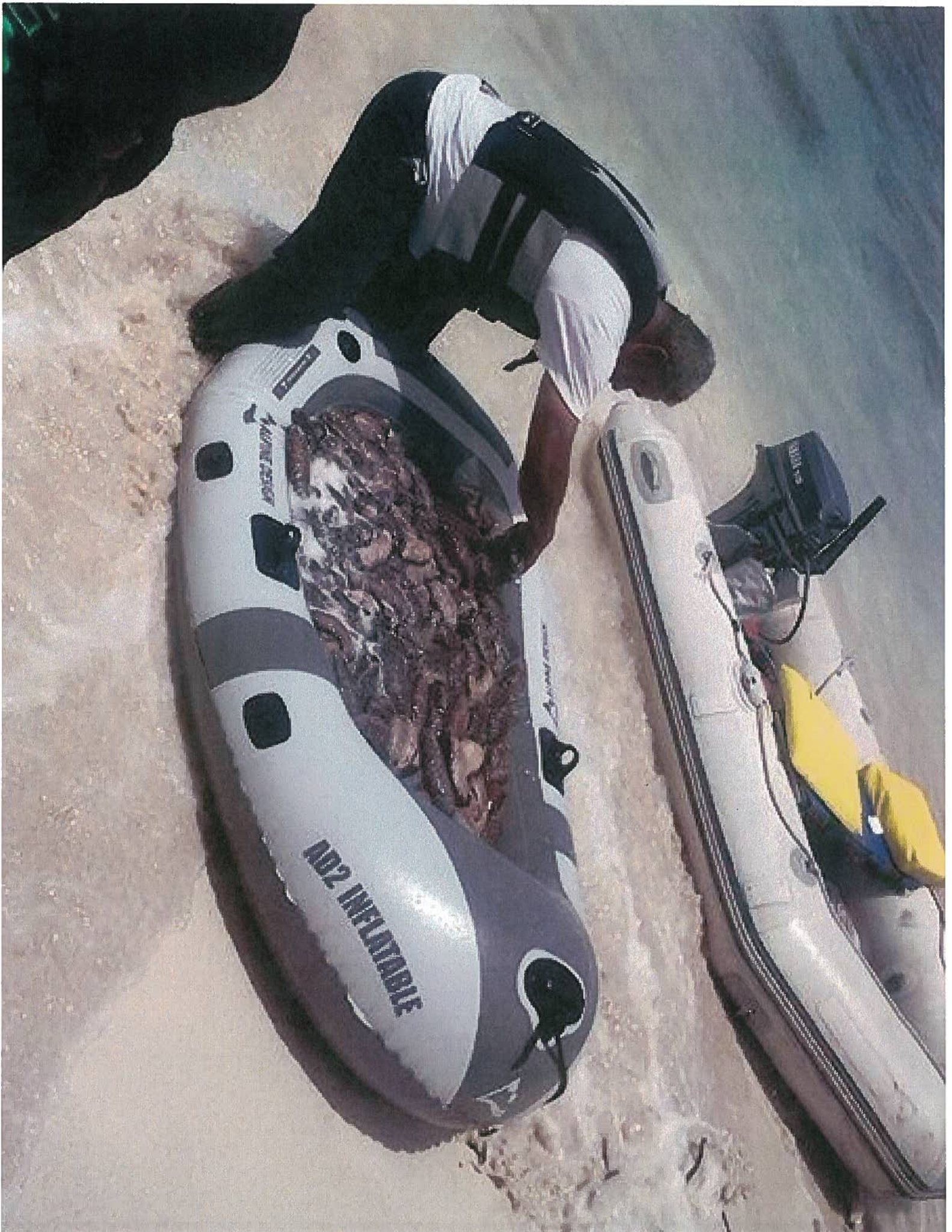




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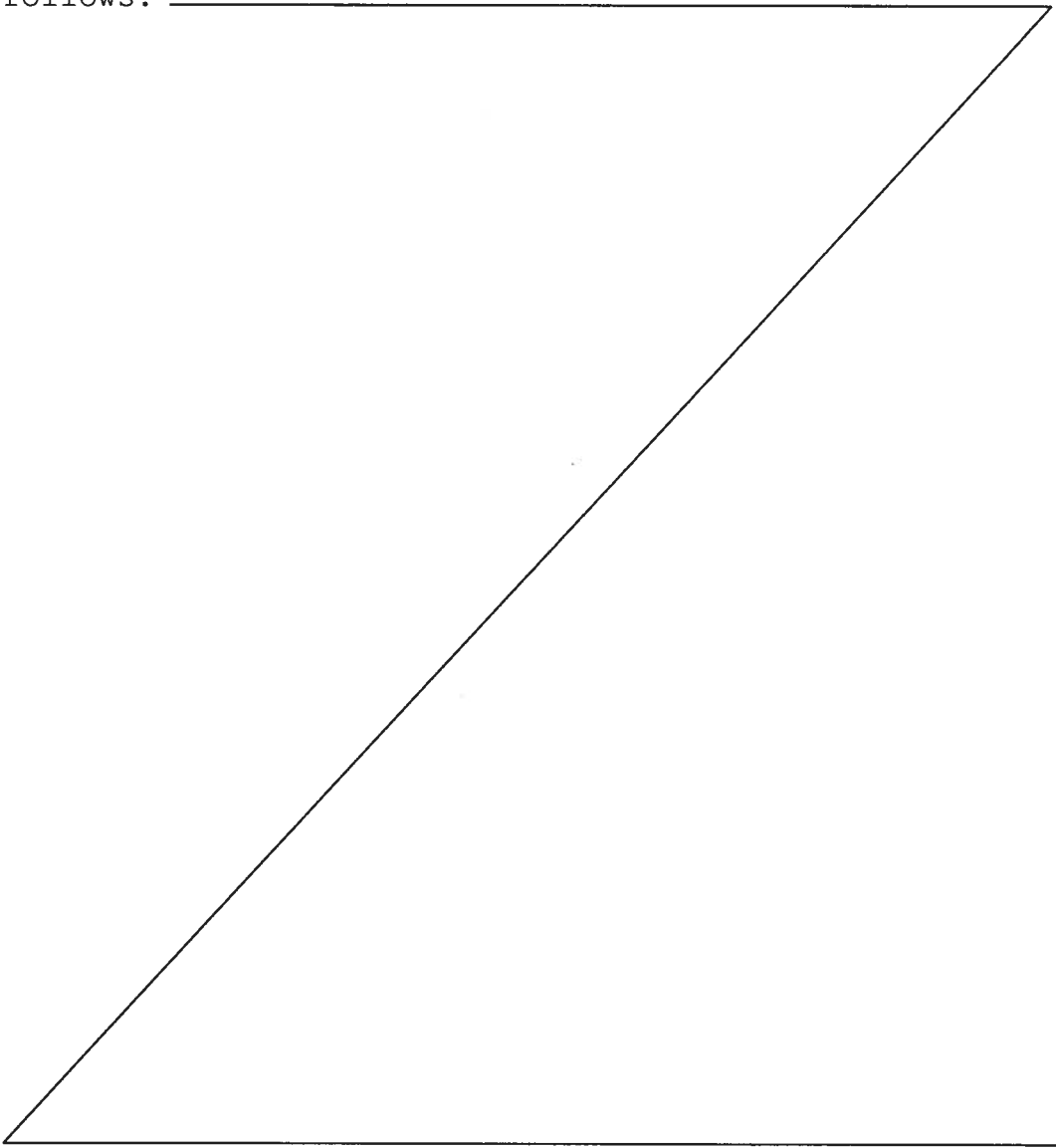


DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-86
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-86, Hawaii Administrative Rules,
entitled "Sea Cucumber", is adopted to read as
follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 86

SEA CUCUMBER

- §13-86-1 Definitions
- §13-86-2 Prohibited activities
- §13-86-3 Penalty

§13-86-1 Definitions. As used in this chapter, unless otherwise provided:

"Sea cucumber" means any species of aquatic life in the class Holothuroidea.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest. [Eff] (Auth: HRS §187A-5) (Imp HRS §§187A-1, 187A-5)

§13-86-2 Prohibited activities. (a) No person shall take, possess, sell, or offer for sale, any sea cucumber from the waters of the State.

(b) This section shall not prohibit the possession or sale of sea cucumbers taken or possessed on or before the effective date of this chapter, provided that any commercial marine dealer selling or offering for sale any sea cucumber on or after the effective date of this chapter shall keep receipts on file pursuant to HRS §189-11. [Eff]

(Auth: HRS §187A-5, 189-10) (Imp: HRS §§187A-12.5, 187A-13, 189-10, 189-11)

§13-86-3 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 187A-13, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State." [Eff] (Auth: HRS §187A-5) (Imp: HRS §§187A-12.5, 187A-13)

2. The Department of Land & Natural Resources finds that the immediate adoption of this chapter is necessary to prevent an imminent peril to natural resources, due to the sudden increase in commercial harvest of sea cucumbers and their particular vulnerability to overfishing.

3. The adoption of emergency rule chapter 13-86, Hawaii Administrative Rules, shall take effect upon filing with the Office of the Lieutenant Governor, and shall be effective for no more than 120 days after such filing without renewal.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of sections 91-4 and 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

SUZANNE CASE
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General